

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: ABBOTT LABORATORIES, ET AL., PRETERM INFANT NUTRITION PRODUCTS LIABILITY LITIGATION)
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MDL No. 3026

Master Case No. 1:22-cv-00071

Judge Rebecca R. Pallmeyer

This Document Relates To All Cases

PLAINTIFFS' MOTION TO REASSIGN CASES

Pursuant to Northern District of Illinois Local Rule 40.4, Plaintiffs Christifer Cervantes, Ashley Cervantes, Waverly Williams, Danielle Williams, Kris Bloom, Astrid Moise, Malachi Highsmith, and Jessica Wilson (collectively, “Plaintiffs”) respectfully move to reassign¹ the following four cases (collectively, “Related Cases”) to this MDL:

- Case No. 22-cv-02022, currently pending before Hon. Franklin U. Valderrama;²
- Case No. 22-cv-02202, currently pending before Hon. Ronald A. Guzman;³
- Case No. 22-cv-02203, currently pending before Hon. Jorge L. Alonso;⁴ and,
- Case No. 22-cv-02206, currently pending before Hon. Joan H. Lefkow.⁵

¹ Plaintiffs file this Motion on direction from the Clerks of Court for the Judicial Panel on Multidistrict Litigation and the Northern District of Illinois, who Plaintiffs contacted for instruction on the most efficient method to have the Related Cases transferred to MDL 3026. Plaintiffs in the Related Cases have also filed a Notice of Potential Tag-Along Actions in the Judicial Panel on Multidistrict Litigation, though have since been informed that the instant Motion to Reassign is necessary to initiate transfer of the Related Cases to MDL 3026.

² Pursuant to Local Rule 40.4(c), a copy of this Complaint is attached hereto as Exhibit 1.

³ Pursuant to Local Rule 40.4(c), a copy of this Complaint is attached hereto as Exhibit 2.

⁴ Pursuant to Local Rule 40.4(c), a copy of this Complaint is attached hereto as Exhibit 3.

⁵ Pursuant to Local Rule 40.4(c), a copy of this Complaint is attached hereto as Exhibit 4.

As detailed below, reassignment of all of the Related Cases is warranted here. Each of the Related Cases is “related” under Local Rule 40.4(a) to one or more actions in this MDL Proceeding because each of the Related Cases involves the same issues of fact and law as one or more of the actions in the MDL Proceeding. Specifically, Plaintiffs in all of the Related Cases assert that they developed necrotizing enterocolitis (NEC) as a direct result of the bovine-based formulas and/or fortifiers – namely, Enfamil – provided to them as premature infants while in Neonatal Intensive Care Units. Plaintiffs in all of the Related Cases similarly assert claims against Mead Johnson & Company LLC a/k/a Mead Johnson Nutrition Company (“Mead”) for (1) failure to warn, (2) strict liability for defective product, (3) negligence, (4) negligent misrepresentation, (5) breach of implied warranties, (6) products liability, and (7) violations of relevant consumer protection acts.

Furthermore, all of the conditions for reassignment of the Related Cases under Local Rule 40.4(b) are satisfied here. **First**, all of the Related Cases are before this Court. **Second**, the handling of all of these cases by this Court will result in a substantial saving of judicial time and effort and reassignment of the Related Cases to this Court will allow one judge to decide whether Defendants violated the same law based on essentially the same conduct. **Third**, none of the Related Cases has progressed to the point where transferring these cases to this Court would be likely to delay the proceedings therein substantially. **Fourth**, the Related Cases and the actions in the MDL Proceeding are susceptible to disposition in a single proceeding because they have substantial areas of overlap. Accordingly, Plaintiffs respectfully request that this Court grant the Motion in its entirety.

ARGUMENT

To have a case reassigned based on relatedness, the movant must satisfy both Local Rule 40.4(a) and (b). *Donahue v. Elgin Riverboat Resort*, No. 04 C 816, 2004 WL 2495642, at *2 (N.D.

Ill. Sept. 28, 2004). This Court has the sound discretion to reassign a case under Local Rule 40.4. *Clark v. Ins. Car Rentals Inc.*, 42 F. Supp. 2d 846, 847 (N.D. Ill. 1999).

Local Rule 40.4(a) provides that cases are “related” if: (1) the cases involve the same property; (2) the cases involve some of the same issues of fact or law, (3) the cases grow out of the same transaction or occurrence; or (4) in class action suits, one or more of the classes involved in the cases is or are of the same. Rule 40.4(a) “does not require complete identity of issues in order for cases to be considered related.” *Fairbanks Capital Corp. v. Jenkins*, No. 02C-3930, 2002 WL 31655277, at *2 (N.D. Ill. Nov. 25, 2002). Rather, it is enough that the two cases “involve *some* of the same issues of fact or law.” *Lawrence E. Jaffe Pension Plan v. Household Int’l., Inc.*, No. 02-C-5893, 2003 WL 21011757, at *3 (N.D. Ill. May 5, 2003) (emphasis in original).

Once the cases have been found to be related, Local Rule 40.4(b) imposes four additional conditions that must be satisfied before a case may be reassigned: (1) both cases must be pending in the Northern District of Illinois; (2) reassignment must result in a substantial saving of judicial time and effort; (3) the earlier case must not have progressed to the point where designating the cases as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases must be susceptible of disposition in a single proceeding. As demonstrated below, reassignment of the Related Cases to this Court satisfies the requirements of Local Rules 40.4(a) and (b), and the Court should grant the Motion.

A. The Related Cases Are “Related” Under Local Rule 40.4 To The Actions In The MDL Proceeding.

In the Transfer Order creating this MDL, the JPML centralized “[a]ll actions . . . expected to share factual questions arising from allegations that cow’s milk-based infant formula products marketed under the Similac and Enfamil brand names have a higher propensity to cause necrotizing enterocolitis (NEC) in infants born prematurely than other, allegedly safer alternatives.” (Doc.

119, Transfer Order). Likewise, Plaintiffs in the Related Cases each allege that cow's milk-based infant formula products marketed under the Enfamil brand name caused Plaintiffs or their prematurely-born children to develop NEC, and each of the Related Cases sets forth claims which substantially overlap with those in the cases currently in the MDL. Accordingly, the Related Cases are "related" within the meaning of Local Rule 40.4(a).

B. All Of The Conditions For Reassignment In Local Rule 40.4(b) Are Satisfied Here.

All of the conditions for reassignment of the Related Cases under Local Rule 40.4(b) are satisfied here. First, all of the Related Cases and the MDL are pending in the United States District Court for the Northern District of Illinois. Second, handling this MDL and the Related Cases will allow this Court to address many of the same issues of fact and law, which will save judicial time and effort. Third, this MDL is in its early stages, with the Transfer Order submitted less than a month ago on April 8, 2022. (Doc. 119, Transfer Order). Likewise, each of the Related Cases are in their early stages, with each having been filed within the last three weeks, and none have progressed to the point where designating these cases related would be likely to delay the proceedings therein substantially. Finally, the Related Cases and the actions in the MDL Proceeding are susceptible to disposition in a single proceeding because they all assert common legal claims.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that Case Nos. 22-cv-02022, 22-cv-02202, 22-cv-02203, and 22-cv- 02206 be reassigned to this Court in the MDL.

Date: May 10, 2022

Respectfully submitted,

/s/ Adam J. Levitt

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* *pro hac vice* motions to be filed

CERTIFICATE OF SERVICE

I, Adam J. Levitt, hereby certify that on May 10, 2022 a copy of the foregoing document was filed electronically using the CM/ECF System, which will send notification of such filing to all counsel of record.

/s/ Adam J. Levitt